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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,091	03/28/2001	Kenneth W. Nimmons	2817/228	2535

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EXAMINER

ARYANPOUR, MITRA

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 09/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/820,091

Applicant(s)

NIMMONS, KENNETH W.

Examiner

Mitra Aryanpour

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 19-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other:

**DETAILED ACTION**  
***Election/Restrictions***

1. Applicant's election without traverse of Invention I directed towards claims 1-18 and species II of Invention I directed towards a cutout into which an identification label is inserted claims 5, 7-12 in Paper No. 9 is acknowledged. Therefore, claims 1-5, 7-18 are pending in this application.

2. Claims 6, 19-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

Regarding applicant's comments on the election of species. It is unclear why applicant asserts that claims 1-6 and 8-19 are generic to both species? Claim 5 is directed towards a photopolymer coating for applying over a printed image. Claim 6 is directed towards a screen print image that is heat transferred to the base. Claim 8 is a substantial duplicate of claim 7 comprising a cutout into which a label is inserted. Claim 9 is dependent on claim 8 and claims 10-12 are dependent on claim 9. Finally claim 19 is a method of retrofitting an existing base and it is grouped with the non-elected invention.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 2, 13, 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuller et al (4,493,486).

Fuller et al discloses a base for use for baseball or softball comprising: a bottom, a top, a side wall attached to the bottom and top face and an identification label in the form of indicia attached to the top face and side face (see figure1; also column 2, lines 64-68).

Regarding claim 13, Fuller et al further shows the base having 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> sidewalls (see figure 2).

Regarding claim 15, Fuller et al shows a post (32) attached to the bottom.

Regarding claim 16, Fuller et al shows a plate (22) attached to the post (32); and wherein the bottom comprises a lip (24, 26, 34) that defines an opening into which a portion of the plate is inserted (plate 22 is slidable into flanged plate 22 which is in cooperation with the bottom of the base).

Regarding claims 17 and 18, Fuller et al shows the base is made of a resiliently deformable material such as rubber (see column 1, lines 12-16).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al (4,493,486) in view of Kennedy, III et al. (6,200,239).

Fuller et al does not teach the indicia to be a team or a league logo. Fuller et al also does not show a method for applying a printed indicia on the base. There are numerous methods available for applying printed indicia on sports objects. Kennedy, III et al. shows a sports ball and various methods of applying indicia in the form of a logo on a ball. One of the suggested methods is a pressure sensitive hot melt adhesive and another is pressure sensitive adhesive and alternatively applying a transparent polymer over the indicia for protective purposes (see column 4, lines 29-67). It would have been obvious to one of ordinary skill in the art in view of Kennedy, III et al to have used anyone of the above methods for applying indicia on a sports object like the base of Fuller et al in order to quickly and economically attach the indicia on the base.

7. Claims 7-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al (4,493,486) in view of Motooka et al (5,584,133).

Fuller et al again does not show a method for applying a printed image/indicia on the base. There are numerous methods available for applying printed images (indicia) on sports objects. Motooka et al shows a baseball catching implement having a name plate fitting of rubber or synthetic resin having elasticity affixed to a back member of the implement at any desired position, wherein the name plate fitting includes a frame member having a contour corresponding to that of a name plate. It would have been obvious in view of Motooka et al to have included a name plate to hold the indicia on Fuller et al's base in order to be able to interchange the indicia as often as needed.

Regarding claim 9, see comments for claim 2.

Regarding claims 10 and 11 see comments for claims 3 and 4.

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Regarding claim 12, see comments for claim 5.

Regarding claim 14, Fuller et al shows the base to be rectangular which is considered as substantially square. Nevertheless, square shaped base' are old and conventional.

### ***Conclusion***


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tomark Sports; Baseball, Softball 2002 Catalog; pages 4-6; Pro Style (6200-ML) Model 12258; and Soft Touch Bases, Model 10038.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703 308 3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703 308 2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7768 for regular communications and 703 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.

MA  
September 6, 2002

  
Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700